

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2494 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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SARVODAYA KELVANI MANDAL

Versus

STATE OF GUJARAT  
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Appearance:

MR BM MANGUKIYA for Petitioner  
MS MANISHA L.SHAH, AGP instructed by  
MR RM DESAI for Respondent No. 1  
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CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 31/03/2000

ORAL JUDGEMENT

By means of filing this petition under Article  
226 of the Constitution, the petitioner has prayed to  
issue a writ of mandamus or any other appropriate writ,

order or direction restraining the respondents from recovering the amount of difference of salary paid to Mr. Shivabhai H. Patel as Craft Teacher from the petitioner-Trust. The petitioner has further prayed to quash and set aside the order dated March 27, 1989 passed by respondent no.3 directing the petitioner to pay difference of salary paid to Mr. Shivabhai H. Patel as Craft Teacher and further intimating that on failure of the petitioner to pay the said amount, necessary amount shall be deducted from the grant payable to the petitioner. The petitioner has also prayed to direct the respondent no.3 to release the grant of the petitioner-Trust for the year 1988-89 forthwith.

2. The petitioner is a Trust registered under the provisions of the Bombay Public Trusts Act, 1950. The Trust runs a school named Ashapuri Uttar Buniyadi Shala at village Koyala, Taluka : Balasinor. The school started initially in the year 1978 and pursuant to the permission granted by the competent authority, Higher Secondary section is also operating in the school run by the petitioner. The petitioner's school wanted to appoint one Craft Teacher for imparting education in agriculture subject . Therefore, the petitioner had sought permission for appointment of one craft teacher from respondent no.3. Permission as prayed for was granted by the respondent no.3 vide letter dated July 2, 1979, a copy of which is produced at Annexure-A to the petition. It was stipulated in the said permission that the petitioner was entitled to appoint a teacher having educational qualifications of either B.Sc. (Agri.), B.Ed. or Diploma in Agriculture. Pursuant to the advertisement issued by the petitioner, Mr. Shivabhai H. Patel as well as other candidates submitted applications for the said post and Mr. Shivabhai H. Patel having obtained maximum marks in the interview, was appointed as craft teacher by a letter dated September 1, 1979. The appointment of Mr. Shivabhai Patel was also approved by the District Education Officer on September 11, 1979 and it was mentioned therein that Mr. Shivabhai Patel would be entitled to the Scale of Rs. 350-600. It is the case of the petitioner that when the books of accounts were audited by the auditor appointed by the respondent no.3, oral instructions were given to the management of the school that the management should move the competent authority to grant the pay-scale to Mr. Shivabhai Patel on the basis that he was graduate and not diploma holder. Accordingly, a letter was written by the petitioner to respondent no.3 on August 20, 1982 recommending grant of higher pay-scale to Mr. Shivabhai Patel. The respondent no.3 by his order dated January 3,

1983 instructed the petitioner to give the scale of Rs. 440-750 to Mr. Shivabhai Patel with effect from September 1, 1981. A copy of the said order is produced by the petitioner at Annexure-C to the petition.

3. It may be mentioned that in view of the direct payment scheme which is in force in the State of Gujarat, salary of each teacher is being paid directly by way of cross cheque by the office of D.E.O. on the basis of salary bill prepared by the school. The respondent no.3 by his order dated March 27, 1989 informed the petitioner that the order fixing pay of Shivabhai Patel in the scale of Rs. 440-750 is revoked and asked the petitioner to pay difference of pay paid to the said teacher forthwith and further intimated that failure to pay the amount of difference, would result into deduction in the grant. That order is produced by the petitioner at Annexure-D to the petition. According to the petitioner, no amount was received towards the salary of Shivabhai H. Patel by the petitioner and, therefore recovery, if any, ought to have been effected from Shivabhai H. Patel and not from the petitioner. According to the petitioner, respondent no.3 himself had sanctioned pay-scale of Rs. 440-750 to Shivabhai Patel and, therefore, recovery sought to be made from the petitioner is illegal. Under the circumstances, the petitioner has filed present petition and claimed reliefs to which reference is made earlier.

4. Though the respondents are duly served, no affidavit-in-reply has been filed by any of them controverting the averments made in the petition.

5. It is true that Mr. Shivabhai H. Patel was not having educational qualifications of B.Sc.(Agri.), B.Ed. and, therefore, he was not entitled to the pay-scale of Rs. 440-750. However, on the recommendation of the petitioner, respondent no.3 himself had sanctioned the said pay-scale to Shivabhai Patel by an order dated January 3, 1983, a copy of which is produced at Annexure-C to the petition. In view of the direct payment scheme which is in force in the State of Gujarat since long, no amount towards salary of Shivabhai Patel was received by the petitioner and salary in excess was received by the said teacher from the Government. Mr. Shivabhai H. Patel has not made any grievance before the Court that he was entitled to pay-scale of Rs. 440-750 and not to the pay-scale of Rs. 350-600 as was determined earlier. Mr. Shivabhai Patel having received the benefit of wrong order, I am of the opinion that recovery ought to have been effected from him and not from the petitioner who has not received the benefit of

said wrong order at all. Under the circumstances, the petition will have to be accepted.

For the foregoing reasons, the petition partly succeeds. Fixation of pay-scale of Mr. Shivabhai H. Patel in the pay-scale of Rs. 350-600 determined by an order dated March 27, 1989 is upheld, but the direction given by respondent no.3 to the petitioner to pay difference of excess salary paid to Mr. Shivabhai H Patel as Craft Teacher is hereby set aside. It is further held that the respondents shall not be entitled to deduct any amount of grant from the petitioner so far as excess amount of salary paid to Mr. Shivabhai H.Patel as Craft Teacher is concerned. It is made clear that the respondents would be entitled to recover the said amount of difference of salary paid to Mr. Shivabhai Patel from himself after following due procedure of law. Rule is made absolute accordingly, with no order as to costs.

(J.M.Panchal,J.)

(patel)